In the High Court of Uttaranchal at Nainital.

Criminal Misc. Applaication No. 281/2004

Naseem and 3 others ……Petitioner.

Vs.

State of Uttaranchal and others ..…Respondents.

Hon'ble Irshad Hussain, J.

Heard Sri Manish Arora learned counsel for the petitioners and Sri G.S.Sandhu learned A.G.A. and perused the record of the petition.

2- By means of this petition filed under section 482 of the Code of Criminal Procedure (for short 'Code') the petitioners prayed for quashing of the proceedings of the criminal case no.215/2001 Sompal vs. Rais and others under sections 323, 324, 504, 506, I.P.C. P.S. Bhagwanpur. From perusal of the record it is evident that some incident according to respondent no.4 took place on 20-9-2000 at 7 p.m. and in the said incident the petitioners assaulted the victims Sompal and Smt. Lata and both of them sustained injuries. The application preferred under section 156(3) of the 'Code' was allowed. The case was registered and investigated and final report was submitted. However the learned Magistrate took cognizance on perusal of the evidence collected during the investigation. The propriety of the order can not therefore be challenged as the learned Magistrate was empowered to consider the evidence from the case diary and to take cognizance of the offence against the petitioners. The petitioners preferred a revision before the Sessions Judge which was dismissed on 27-4-2004 and rightly so because the injuries sustained by the said two injured were not prima facie superficial or self-inflicted. This aspect of the matter was indicative of the fact that some incident had in fact taken place and that the petitioners assaulted the victims as stated in the application and in the evidence collected during the investigation.

3- Learned counsel for the petitioners submitted that on account of pending civil litigation the petitioners have been falsely implicated. This aspect of the matter can only be considered at the trail because at present this court will not enter into the enquiry and sift the material to consider as to whether the evidence is reliable or not and whether the conviction can be sustained on the basis of the evidence. This is the function of the trial court.

4- Considering this, there is no merit in this petition and the same is dismissed in limine.

Dated: 25-06-2004 **(Irshad Hussain, J.)**

ISB